

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

Gordon J. MacRae

v.

Civil No. 14-cv-45-JL

Richard M. Gerry, Warden,  
New Hampshire State Prison

**O R D E R**

The petitioner, Gordon MacRae, has filed a petition for writ of habeas corpus under 28 U.S.C. § 2254, alleging that he is in custody in violation of the United States Constitution. The respondent, the warden of the New Hampshire State Prison, has moved to dismiss MacRae's petition as untimely. A hearing on the respondent's motion is scheduled for tomorrow, March 17, 2015. In preparing for that hearing, the court learned that the office of the New Hampshire Attorney General represented the State of New Hampshire with respect to MacRae's appeal of his conviction to the New Hampshire Supreme Court. As the parties may already be aware, the court was employed in that office while MacRae's appeal was pending from 1994 to 1996.

The court is disinclined to recuse itself sua sponte, since it had no personal involvement in MacRae's appeal, and has no recollection of that appeal or the handling of it by the Attorney General's office, or of ever being aware of or discussing it with anyone in that office or elsewhere. Courts have generally

concluded that a judge's employment in the office of a prosecuting authority is, by itself, not sufficient grounds for recusal. See , e.g., [Neroni v. Coccoma](#), No. 13-cv-1340, 2014 WL 2532482, \*5 (N.D.N.Y. June 5, 2014); [Nesbitt v. Houston](#), No. 13-cv-75, 2013 WL 5919176, \*1 (D. Neb. Oct. 31, 2013).

Nonetheless, should either party wish to seek relief based upon the court's prior employment in the Attorney General's office, it may do so at tomorrow's hearing. The court apologizes for the lateness of this notice, but if the court was ever aware that McRae's appeal was handled by the NH Attorney General's office during its employment there, it had forgotten that fact, still has no recollection of it, and only just realized that the appeal was handled at that time.

**SO ORDERED.**

  
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Joseph N. Laplante  
United States District Judge

Dated: March 16, 2015

cc: Robert Rosenthal, Esq.  
Cathy J. Green, Esq.  
Elizabeth C. Woodcock, Esq.